



Comptroller General
of the United States

Washington, D.C. 20548

McAuliffe
43500

Decision

Matter of: Anglo American Auto Auctions, Inc.

File: B-242538

Date: April 29, 1991

Jerry W. Cox, Esq., Murphy & Demory, Ltd., and Robert C. Lalain for the protester. Ellis Richardson for A-Richardson Towing, Inc., Howard W. Allgood for Airport Industrial Center, Inc., Gary M. Charlesworth for Bishop Brothers Auto Auction, and Dolph Overton for Systems Control, interested parties. Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Geographical restriction in solicitation for the towing, storage, and disposal of seized vehicles does not unduly restrict competition where the agency reasonably based the restriction upon its legitimate operational needs.

DECISION

Anglo American Auto Auctions, Inc. protests as unduly restrictive of competition the geographical restriction in request for proposals (RFP) No. MS-91-R-0001, issued by the United States Marshals Service for the towing, storage, and disposal of seized vehicles in the Northern District of Georgia. We deny the protest.

The Marshals Service has the primary responsibility for the management of vehicles that have been involved in violations of federal law and have been seized by an agency of the United States Department of Justice (e.g., the Drug Enforcement Administration and the Federal Bureau of Investigation). The agency issued the RFP on November 5, 1990, for the required comprehensive care services for seized vehicles. The RFP contemplates the award of an indefinite quantity, indefinite delivery contract, based upon firm, fixed-unit prices, for a base year plus 4 option years, for each of three judicial districts: Northern Georgia, South Carolina, and Eastern

North Carolina,^{1/} The solicitation requires contractors to be located within delineated geographic areas within each of the districts. Anglo challenges the solicitation's geographical restriction for the Northern District of Georgia which requires contractors to have a storage facility within a 15-mile radius of Atlanta. In response to Anglo's request for clarification of the geographical restriction, the agency amended the RFP to require contractor facilities to be located within the area inside interstate highway 285 (I-285) and including the area within 5 miles outside of I-285. The Marshals Service's office in Atlanta is approximately 10 miles inside of I-285 in all directions. Seven offerors, all having storage facilities within the designated area for Northern Georgia, submitted proposals for the requirement by the January 8, 1991 closing date. The agency has held up the award of a contract for Northern Georgia pending the outcome of Anglo's January 7 protest to our Office.

Anglo is located 13 miles beyond the RFP's 15-mile radius restriction. The protester contends that the geographic limitation violates the requirement for full and open competition since it precludes Anglo from competing under the RFP. Anglo contends that the Marshals Service has conducted noncompetitive procurements in the past and that the agency has here similarly imposed the restriction in order to exclude Anglo and favor the incumbent for an award. Anglo believes the restriction is unreasonable and states that agency personnel would only have to travel an additional 13 miles (or, as Anglo contends, an additional 10 minutes of highway driving for a total of approximately 40 minutes driving time) from the Marshals Service's office to the protester's facility. Even though Anglo's facility is further than the competitors within the designated area, the protester alleges that since its facility is located directly off of a highway, it could take less time to travel to Anglo than to a location within the most congested parts of the designated area. The protester also alleges that since other solicitations for similar services in different areas, such as the RFP's North and South Carolina requirements, provide more lenient geographical restrictions, the RFP's 15-mile limit is unreasonable.

The Marshals Service reports that the 15-mile restriction is reasonable and represents its legitimate operational needs. The agency explains that there is a high volume of seizures in the district (approximately 200 vehicles a year), with most seized vehicles located within and around the designated

1/ On January 8, 1991, the Eastern North Carolina portion of the RFP was cancelled by solicitation amendment due to a change in the agency's requirements.

area, generating a large inventory of property to be handled by a limited number of deputy marshals. The coordination and oversight of the contract by the agency requires that the Marshal's staff spend a good deal of time at the contractor's site since only the agency can inventory, receive, authorize the release of, and spot check the vehicles. The Marshals Service contends that the geographical restriction is reasonable and necessary to limit the "unproductive" commuting time and distance between the agency's office and the contractor's facility. The agency adds that since the actual seizing agencies are located in the immediate area of the Marshals Service's Atlanta office, the 15-mile restriction will also benefit those agencies which, if the contractor is located nearby, would often deliver the seized vehicles directly to the contractor to save the time and cost of transferring custody of the vehicle to the marshals for transport to the contractor's facility. The agency also points out that a larger customer base exists within the delineated urban area which might attract bigger crowds and higher prices at the contractor's auctions. Finally, the Marshals Service concludes that the seven bids received indicate that adequate competition exists within the specified area. The agency adds that at least one other bidder leased property within the designated area in order to comply with the RFP's distance requirement and that Anglo could have done the same.

An agency may restrict a procurement to offerors within a specified geographical area if the restriction is reasonably necessary for the agency to meet its minimum needs. NFI Management Co., B-240788, Dec. 12, 1990, 90-2 CPD ¶ 484. The determination of the proper scope of a geographical restriction is a matter of the agency's judgment that we will review in order to ensure that it has a reasonable basis. Id. Here, we find that the Marshals Service's determination to limit offers to contractors providing storage facilities within the delineated area was reasonable in relation to the agency's asserted minimum needs.

The Marshals Service has provided a number of reasons in support of its location requirements. The reasons proposed appear to be reasonably grounded in the legitimate operational needs of the agency. Regarding travel time, even if there are occasions, as Anglo suggests, during the height of traffic where it could conceivably take less time for the Marshals Service's staff to drive to the protester's more distant, but highway-accessible, location than to drive to a more congested location within the designated area, we find that such occasions alone would not render the geographical restriction unreasonable. The contractor is to be on call 24 hours a day and there is no evidence in the record to show that the required towing and personnel travel will necessarily take


place most often during the most congested traffic times. Without more persuasive information from the protester, we cannot find unreasonable the agency's determination that the short distance traveled by its staff will most often result in the least time spent traveling. Accordingly, we conclude that the RFP's geographical restriction reasonably relates to the agency's legitimate operational need to improve efficiency by minimizing unproductive employee travel time during work hours. See generally, Pamela A. Lambert, B-227849, Sep. 28, 1987, 87-2 CPD ¶ 308.2/

The restriction also is reasonable in light of the time and costs that may be saved by the seizing agencies being able to deliver the seized vehicles directly to the contractor due to the close proximity of the contractor's facilities. This apparently is the current practice of the seizing agencies where the storage facility is conveniently located and results in less burden on the Marshals Service's resources. Also, although the protester claims that many people attend its auctions even though they are located in a more rural area, we find reasonable the agency's determination that a facility within the designated urban area may attract a larger metropolitan customer base and, consequently, higher prices

2/ In response to the protester's comparison of the RFP's 15-mile limit to other solicitations' more lenient geographical restrictions, any determination about the proximity of contractor facilities to a particular Marshals Service office should vary with each district. Such determination must reasonably be based upon the peculiar features of each area. For example, at least two major cities would have been serviced under the RFP's North Carolina procurement, which necessarily would have required a more lenient restriction to encompass both cities. Thus, we find unpersuasive Anglo's comparison of the geographical restrictions imposed in different geographical areas.

offered at auction. Contrary to the protester's allegation that the restriction would unduly limit competition, the restriction appears to have had a minimal effect on competition since seven firms submitted offers including at least one firm which leased space in the designated area.^{3/}

Accordingly, the protest is denied.


James F. Hinchman
General Counsel

^{3/} We also note that, other than Anglo's unsupported conjecture, there is no evidence in the record before us that suggests that the geographical restriction was imposed merely to exclude the protester from the competition or to favor the incumbent. Likewise, the protester has failed to provide any evidence at all to support its position that the agency acted improperly here simply because the agency may have improperly conducted noncompetitive procurements in the past.